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SUPREME COURT, U.S.

IN THE

UNITED STATES SUPREME COURT

NO. 81-6917

UNITED STATES OF AMERICA,
Plaintiff/Appellee,

VS.

BRUCE HANSON,
Defendant/Appellant.

ON APPEAL FROM THE COURT OF APPEALS

FOR THE FIFTH CIRCUIT

JURISDICTIONAL STATEMENT

Bruce Hanson
Route 2, 33 Wildwood
Lewisville, Texas 75067
214 436-6471

QUESTION PRESENTED

Does the Fifth Circuit Court of Appeals' requirement of completing a CJA Form 23 before granting a motion for leave to proceed on appeal in forma pauperis, when a properly sworn to affidavit of financial inability was supplied by the appellant, exceed the requirements of 18 U.S.C. 3006A and 28 U.S.C. 1915(a), deny the appellant essential justice, adhere to ritualistic form, ignore the affidavit of financial inability previously accepted by the Supreme Court of the United States, and deny the appellant due process in violation of the Fifth Amendment to the Constitution of the United States.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

NO.

BRUCE HANSON,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

ON APPEAL FROM THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT

JURISDICTIONAL STATEMENT

This case comes on appeal as a result of the denial by the United States Court of Appeals for the Fifth Circuit of the Appellant's motion for leave to file an appeal in forma pauperis. Every individual who has been convicted of a criminal offense, even a misdemeanor is entitled as a matter of right to an appeal of that conviction. Title 18, Section 3006A, of the United States Code, commonly referred to as the Criminal Justice Act, provides by statute the ability to proceed on appeal without prepayment of fees or costs provided the appellant meets the requirements of 28 U.S.C. 1915(a). The denial by the Fifth Circuit Court of Appeals of Appellant's motion for leave to proceed on appeal in forma pauperis causes justice to be sold, be a denial of due process to the Appellant, and a denial of equality under the law.

OPINIONS BELOW

The order denying the Appellant's motion for leave to proceed on appeal in forma pauperis and the three judge panel's denial of reviewing the single jurist's action are printed in the Appendix to the Appeal.

JURISDICTION

The Appellant is a natural born freeman, exercising no privileges conferred by any state and as such is entitled to the full protection of the United States Constitution and the Bill of Rights, which act as a restraint upon the actions of the government and not as limitations upon the Appellant. The United States Constitution in Article III, Section 2. Clause 2, confers appellate jurisdiction upon the Supreme Court of the United States in all cases both as to fact and law with such exceptions, and under such regulation as the Congress may by law have directed. Congress has made no exceptions by law concerning an appeal to the Supreme Court of the United States from the Court of Appeals. Congress has in 28 U.S.C. 1254 extended to the Supreme Court the discretionary authority to review cases from the United States Court of Appeals by Writ of Certiorari. This however in no way diminishes the right of the Appellant to proceed by way of appeal, which is not discretionary, to the Supreme Court of the United States since 28 U.S.C. 1254 is not an exception to the Supreme Court's appellate review but is an enlargement of its reviewing authority. Even though Congress has enacted 28 U.S.C. 1254, Appellant is still able to proceed to the Supreme Court of the United States from the United States Court of Appeals by way of an appeal, since the judicial action of all inferior courts established by Congress in accordance with the Constitution is subject to the appellate jurisdiction of the supreme judicial tribunal of the government (U.S. v Coe, 15 SCt. 16, 155 U.S. 82, 39 LEd 76, 1894). The motion for leave to proceed on appeal in forma pauperis in the Fifth Circuit Court of Appeals was an original request to an inferior court. As an inferior court, its judicial actions are subject to the appellate review of the Supreme Court by way of appeal. The appellate power is conferred in all cases

in the general grant of judicial power (Ableman v Booth, Wis. 1869, 62 U.S. 506, 21 How. 506)

STATUTES INVOLVED

18 U.S.C. 3006A(e)(1) Services other than counsel

> Counsel for a person who is financially unable to obtain investigatory, expert or other services necessary for an adequate defense may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the person is financially unable to obtain them, the court, or the United States magistrate, if the services are required in connection with a matter over which he has jurisdiction, shall authorize counsel to obtain the services.

28 U.S.C. 1915(a)

> Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor, by a person who made affidavit that he is unable to pay such costs or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that he is entitled to redress.

STATEMENT OF THE CASE

I. FACTS

I was convicted of three misdemeanor crimes against the United States of America on August 10, 1981. I filed notice of appeal to the United States Court of Appeals for the Fifth Circuit on November 23, 1981. On the 4th day of January, 1982, I filed a motion for leave to proceed in the Fifth Circuit Court of Appeals in forma pauperis. The motion was accompanied by affidavit attesting to my inability to afford the costs of an appeal. On the 12th day of January, 1982, I was informed by the clerk that my affidavit was unacceptable and that I must complete their affidavit before my motion for leave to proceed on appeal in forma pauperis would be considered. (See Appendix P.) On the 29th day of January, 1982, I was informed by the Fifth Circuit Court clerk that my affidavit was not sufficient and did not contain the information required under the Criminal Justice Act and that I was required to complete CJA Form 23 or have the appeal dismissed for want of prosecution under Fifth Circuit Local Rule 9.2. (See Appendix P.) On February 2nd, 1982, I filed a judicial notice and on February 4th, 1982, for a motion for a judicial determination of the sufficiency of my submitted affidavit. On the 6th day of February, 1982, I applied in forma pauperis with the Supreme Court of the United States for a writ of prohibition and writ of mandamus against the Clerk of the Fifth Circuit Court of Appeals. My request to file the petitions for writ of prohibition and writ of mandamus was docketed on February 8, 1982. On February 8, 1982, I was informed by the Clerk of the Fifth Circuit Court of Appeals that the appeals court had requested the Appellee to file a response to my motion for leave to proceed in forma pauperis. On March 15th, 1982, a single jurist denied my motion to proceed on appeal in forma pauperis. After my request for a review

of the single judge's action was denied on April 7, 1982, I filed notice of appeal on April 14, 1982.

I have submitted an affidavit attesting to my inability to pay the financial costs of a criminal appeal. This affidavit has never been contravened by the Plaintiff, nor has there been a ruling as to its sufficiency by the appeals court. Quite the contrary, the affidavit of financial inability submitted to the appeals court is the same affidavit that I submitted to the Supreme Court of the United States when I sought to file a petition for writ of prohibition and writ of mandamus. The petition for writ of prohibition and writ of mandamus was docketed without payment of the required docketing fee.

ARGUMENT

In the case presently before this Court, not only the filing fee for the appeal is involved but the sum of two thousand one hundred dollars ($2,100) for a court reporter's transcript is involved, since a transcript of the proceedings is both a necessity for waging an effective appeal and a requirement of the appellate court and the cost of printing the brief.

Further, the Criminal Justice Act, 18 U.S.C.A. §3006A, et seq., is a comprehensive congressional plan designed to provide representation, both at trial and on appeal, to any person charged with a crime who is financially unable to obtain adequate representation. Congress provided that the term "representation" would include not only the appointment of effective, competent counsel for a person who cannot obtain a private attorney, but would also include furnishing the accused with other services necessary for an adequate defense at government expense. Section 3006A(a) provides in part:

> "Representation under each plan shall include counsel and investigative, expert, and other services necessary for an adequate defense."

The Appellant, Bruce Hanson, is financially unable to pay the fee charged by the court reporter of the United States District Court for the Eastern District of Texas for a stenographic transcript of his trial, the cost of filing the appeal, and the cost of printing the brief and record on appeal. Decisions of the United States Supreme Court have held unequivocally that defendants unable to pay for trial transcripts are entitled to have them furnished without cost since they are an essential tool for the appellate process. Hardy v. United States, 375 U.S. 277, 84 SCt. 424 (1964); Britt v. North Carolina, 404 U.S. 226, 92 SCt. 431 (1971). The Fifth Circuit has recognized that a defendant must have access to such a minimal defense aid as a trial transcript

to offset the prosecutorial advantage the government enjoys with its unlimited resources. See United States v. Henderson, 525 F 2d 247, 251 (5th Cir. 1975), where the Court affirmed the district court's dismissal of an indictment for conspiring to import marijuana when the Department of Justice refused to provide indigent defendants with transcripts of state prosecutions on similar charges concerning the same events. The district court found that the defendants would be prejudiced by going to trial in federal court without access to the state court transcripts. The Ninth Circuit, recognizing the profound effect of the disparity in assets as between the government and an indigent defendant, reversed a conviction for robbery of a savings and loan association because the trial judge had refused to authorize government payment for an electroencephalogram examination of the defendant under 18 U.S.C. 3006A(e) when the evidence demonstrated that the Defendant may have had a defense based upon the fact that he was suffering from epilepsy at the time of the robbery. The court found that any reasonable attorney would engage such services for a client having independent financial means to pay for the examination. United States v. Hartfield, 513 F 2d 254 (9th Cir. 1975). If a defendant is entitled to receive from the government such ancillary services under §3006A(e) which will merely aid the defendant in refreshing his memory or assisting in the impeachment of witnesses on cross-examination at a second trial in federal court on charges similar to that which resulted in an acquittal in state court, or which will merely add weight to his contention of mental impairment at trial, then I am certainly entitled to a copy of this trial transcript which is the sine qua non of an effective direct appeal. See United States v. Brown, 443 F 2d 659 (D.C. Cir. 1970); and United States v. Henderson, 525 F 2d 245 (5th Cir. 1975).

As Rule 7 of the Rules of the Court of Appeals for the Fifth Circuit recognizes, determination of whether a defendant is entitled to the benefits of the Criminal Justice Act, 18 U.S.C. 3006A, is not governed by a requirement of indigency on the part of the defendant, but rather by his financial inability to secure adequate representation. While Rule 7 is framed in terms of entitlement to appointment of counsel under §3006A(b), precisely the same considerations apply in determining whether the government is required to pay for essential stenographic services which will enable the defendant to provide an effective, vigorous appeal. Section 3006A(e)(1) entitled "Services Other Than Counsel" of the Criminal Justice Act provides:

> "Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the person is financially unable to obtain them, the court...shall authorize counsel to obtain services."

It is significant that this section is not limited to "counsel appointed under this section," as is §3006A(e)(2). Congress clearly intended that all defendants who cannot afford to obtain services essential to an effective argument of their case may obtain these services at government expense. The only requirement I must meet is that I must be able to demonstrate to the Court that the services are necessary for an adequate defense and that I am financially unable to secure the service. See the legislative history of §3006A(e)(1) of the Criminal Justice Act, 1970, United States Code Congressional and Administrative News, Vol. 2 at 3991. The United States Supreme Court and the Fifth Circuit have left no doubt that the trial transcript is an essential tool for prosecuting an effective appeal. See Hardy, Britt and Henderson, Supra. The first element of the §3006A(e)(1) test is therefore satisfied. The affidavit of impecuniosity stating my financial condition as of November 5,

1981, which has not been controverted by any current records or oaths, and the present affidavit illustrates that I cannot pay the fee that the court reporter has estimated that the trial transcript will cost $2,100 or the other costs involved; filing fee and printing of appellant's brief.

The Fifth Circuit Court denied my motion for leave to proceed on appeal in forma pauperis without comment. At the same time, in the same order they left reconsideration of the motion provided I complete a CJA Form 23, which is actually an affidavit concerning financial ability to assume the costs of an appeal.

It is evident from this order that my motion to proceed in forma pauperis motion was denied for the sole reason that a CJA Form 23 did not accompany it. However my motion to proceed in forma pauperis did contain an affidavit of financial inability. It was stated in terms that were and are clear and concise to me. It contained all the elements necessary to determine the fact of my indigency and/or financial inability to assume the costs of an appeal and could be understood by most anyone.

The fact that it could be understood by most anyone and that it contained the elements necessary to determine my financial inability to pay is amply demonstrated by my petition for writ of prohibition docketed in the United States Supreme Court on the 8th day of February, A.D. 1982. This petition was filed with a leave to file in forma pauperis. The leave to file in forma pauperis a writ of prohibition was accompanied by the identical affidavit of financial inability that was presented to the Fifth Circuit Court of Appeals. The Supreme Court docketed my petition for a writ of prohibition without payment of the docketing fee, thus recognizing my affidavit of financial inability to pay the costs required by the United States Supreme Court.

In my motion to the Fifth Circuit Court for reconsideration of the single jurist's denial of my motion for leave to proceed on

appeal in forma pauperis, I address the fact that the Supreme Court of the United States had already granted me leave to proceed in forma pauperis with that court on a collateral matter using the identical affidavit submitted to the Fifth Circuit. The motion for reconsideration was denied without any comment.

The Fifth Circuit Court has ignored the clear meaning of the Criminal Justice Act and 28 U.S.C. 1915 concerning my affidavits of indigency by requiring the ritualistic submission of a court form for the substance of the affidavit presented to them.

Section 3006A(6) of Title 18 states: "If a person for whom counsel is appointed under this section appeals to an appellate court or petitions for writ of certiorari, he may do so without prepayment of fees, costs or security therefor and without filing the affidavit required by Section 1915(a) of Title 28.

While this paragraph of §3006(a) deals with those persons who have already attained the status of in forma pauperis, it nevertheless reinforces my contention. Here it clearly states that if you have been accorded in forma pauperis in the district court it is not necessary for the individual to file the affidavit required in 28 U.S.C. 1915(a) to proceed on appeal in the appellate court. It therefore follows that if an individual has not proceeded in the district court in forma pauperis he must submit an affidavit in accordance with 28 U.S.C. 1915(a) in order to proceed in forma pauperis on appeal in the appeals court.

Section 1915(a) of Title 28 states: "Any court of the United States may authorize the commencement, prosecution or defense, civil or criminal, or appeal therein, without payment of fees and cost or security therefor by a person who makes affidavit that he is unable to pay the costs or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that he is entitled to redress.

I have submitted such an affidavit. The Fifth Circuit has ignored that submitted affidavit. The Supreme Court of the United States has accepted my affidavit of financial inability in a collateral action. The only legitimate purpose for CJA 23 Form is to assist the requestor of in forma pauperis if he has not submitted his own affidavit setting forth that he is unable to pay the costs or give security therefor.

The Fifth Circuit Court has gone beyond the requirement of 18 U.S.C. 3006(A) and 28 U.S.C. 1915 (a) by making it a requirement for appeal to that appellate court of completing a CJA Form 23 even though an affidavit in accordance with 28 U.S.C. 1915(a) has been attached to my request for leave to proceed on appeal in forma pauperis. Adherence to ritualistic form rather than to substance is contrary to the due process clause of the Fifth Amendment of the United States Constitution.

Further, the Fifth Circuit Court has set a standard more severe than that of the Supreme Court of the United States for the appellant in meeting the test of indigency for submitting questions to the Court for adjudication. That is, since the federal appeal court normally hears criminal appeals from the federal district court first, by denying those requests for leave to proceed in forma pauperis because they have an affidavit of financial inability rather than a CJA 23 Form, the appellate court reduces the right of the indigent to access to not only the appeals court but also to the Supreme Court of the United States itself.

CONCLUSION

The foregoing considered, the Supreme Court should note probable jurisdiction because of the ritualistic adherence to form by the Fifth Circuit Court of Appeals rather than to substance when deciding on Appellant's lack of financial ability to assume the costs of a criminal appeal, denying the Appellant essential justice, ignoring the affidavit previously accepted by the Supreme Court of the United States, and denying the Appellant due process.

Respectfully

Bruce Henson
Rt 2, 33 Wildwood Dr.
Lewisville, Tex 75080
214-436-6471

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

U.S. COURT OF APPEALS
FILED
APR 14 1982
GILBERT F. GANUCHEAU
CLERK

NO. 81-2452

UNITED STATES OF AMERICA,
Plaintiff/Appellee

vs.

BRUCE HANSON,
Defendant/Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

NOTICE OF APPEAL

Take Notice that the Appellant, Bruce Hanson, above styled and numbered cause, appeals to the United States Supreme Court from the order of the Fifth Circuit Court of Appeals denying Appellant's motion to proceed on appeal in forma pauperis entered on the 7th day of April, 1982, in the above styled and numbered cause.

Respectfully,

Bruce Hanson

Bruce Hanson, Appellant
Route 2, 33 Wildwood
Lewisville, Texas 75067
214 436-6471

CERTIFICATE OF SERVICE

I, Bruce Hanson, do hereby certify that a true and correct copy of the foregoing Notice of Appeal was served on Plaintiff/ Appellee's attorney, U. S. Attorney's Office, P. O. Box 1049, Tyler, Texas 75710, and on the Solicitor General of the United States, Department of Justice, Washington, D. C. 20530, on this the 12th day of April, A.D. 1982, by U. S. mail.

Bruce Hanson

United States Court of Appeals

FIFTH CIRCUIT

GILBERT F. GANUCHEAU
CLERK

OFFICE OF THE CLERK

TEL 504 - 589-6514
600 CAMP STREET
NEW ORLEANS, LA 70130

January 12, 1982

Mr. Bruce Hanson
Route 2
33 Wildwood Drive
Lewisville, TX 75028

No. 81-2452 - USA -vs- HANSON

Dear Mr. Hanson:

Receipt is acknowledged of your motion for leave to proceed on appeal in forma pauperis.

Before the court can consider your motion, it will be necessary for you to complete and return the enclosed affidavit of financial status and make service of your motion and affidavit on government counsel.

Sincerely,

GILBERT F. GANUCHEAU, Clerk

By Rosalie Varino
Rosalie C. Varino
Case Manager

/rcv

encl.

cc: Mr. Glenn L. Archer, Jr.

United States Court of Appeals

FIFTH CIRCUIT

GILBERT F. GANUCHEAU
CLERK

OFFICE OF THE CLERK

TEL 504 - 589-6514
600 CAMP STREET
NEW ORLEANS, LA 70130

January 29, 1982

Mr. Bruce Hanson
Route 2
33 Wildwood Drive
Lewisville, TX 75028

No. 81-2452 - USA -v- HANSON

Dear Mr. Hanson:

Receipt is acknowledged of your letter of January 26, 1982.

We have been authorized to advise that the affidavit you have submitted showing your inability to pay the costs of proceeding on appeal,etc. is insufficient as it does not contain all the information required under the Criminal Justice Act.

Accordingly, unless the required CJA Form 23 affidavit previously forwarded to you is received in this office within ten days from this date, we have been authorized to dismiss this appeal for want of prosecution under Fifth Circuit Local Rule 9.2.

Sincerely,

GILBERT F. GANUCHEAU, Clerk

By Rosalie Varino
Rosalie C. Varino
Case Manager

/rcv

cc: Mr. Glen L. Archer, Jr.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U.S. COURT OF APPEALS
FILED
MAR 15 1982
GILBERT E. GANUCHEAU
CLERK

No. 81-2452

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

VERSUS

BRUCE HANSON,

Defendant-Appellee.

- - - - - -

Appeal from the United States District Court for the
Eastern District of Texas

- - - - - -

O R D E R:

IT IS ORDERED that appellant's pro se motion for leave to appeal in forma pauperis is DENIED.

IT IS FURTHER ORDERED that this ruling will be reconsidered if appellant files a properly filled in CJA Form 23 affidavit within 20 days after the date on which this order is filed.

UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 81-2452

U.S. COURT OF APPEALS
FILED
APR - 7 1982
GILBERT E. GANUCHEAU
CLERK

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BRUCE HANSON,

Defendant-Appellant.

- - - - - - - - - - -

Appeal from the United States District Court for the Eastern District of Texas

- - - - - - - - - - -

Before GEE, GARZA and TATE, Circuit Judges.

B Y T H E C O U R T : -

IT IS ORDERED that appellant's pro se motion for reconsideration of this Court's order of March 15, 1982 denying appellant's motion for leave to appeal in forma pauperis is DENIED.

NOT-6M